N. J. Eq., 328; *Russell v. Briggs,* 165 N. Y., 500; *Den v. Ackerman,* 182 Pa. St., 591. But where it is evident from the agreement that the parties themselves did not intend to measure the services by any pecuniary standard, as in the principal case, and legal damages will not compensate for the work done, it seems that equity, to prevent the perpetration of fraud ought to decree specific performance, especially when, as here, the whole course of life or life work of the plaintiff has been changed in carrying out his end of the bargain.

WATER COMPANIES—CONTRACTS FOR FIRE PROTECTION—BREACH—ACTION BY TAXPAYER.—GERMAN ALLIANCE INSURANCE CO. V. HOME WATER SUPPLY CO., 33 SUP. CT., 32.—*Held,* that a contract by a city with a water company for a water supply will not sustain an action against the water company for a breach of its contractual obligations to furnish water for fire protection, brought by a taxpayer whose property was destroyed by fire as the result of such breach, the contract not appearing to have been made for the benefit of taxpayers.

In twenty-four jurisdictions in the United States, and in England, the doctrine of the principal case is upheld, but the Courts of Florida, Kentucky, and North Carolina have persistently maintained one directly contrary. Various reasons are given in support of the majority view. In some decisions, it is said that the city had no power to make a contract for the benefit of its citizens, *Mott v. Water Co.,* 48 Kan., 12; but it is the general rule that a municipal corporation has the power, unless restricted by statute or charter, to enter into any contract and incur any debt necessary to enable it to carry out the particular powers expressly or impliedly conferred upon it. *Webb City & Carterville W. Co. v. Webb City,* 78 Mo. App., 422; *E. St. Louis v. Gas Co.,* 98 Ill., 415. And so it has the power to enter into contracts with private individuals or corporations for supplying water for the municipality and its inhabitants. *Webb City & C. v. Webb City, supra; Ancrum v. Camden W. Co.,* 82 S. C., 284. Other decisions hold that there is no privity of contract between the water company and the taxpayer; *Lovejoy v. Bessemer W. Co.,* 146 Ala., 374; still others hold that the contract was not made for the benefit of the taxpayer, and, in one instance, notwithstanding a specific provision therein to the contrary. *Mott v. Water Co., supra.* But the greater number of decisions are based on the doctrine that a beneficiary cannot sue unless he is one to whom the promisee owes some legal or equitable duty. *Mott v. Water Co., supra; Howsmon v. Trenton W. Co.,* 119 Mo., 304. Privity therein is not generally requisite for maintaining an action for breach of a contract, for in twenty-five States, including Georgia, Illinois, Indiana, Kansas, Missouri, Nebraska, New York, Ohio, South Carolina, and Wisconsin, where the doctrine of the principle case is consistently followed, a sole or donee beneficiary of a contract is allowed to maintain an action for breach thereof. *Wald's Pollock on Contracts,* Williston's 3d Ed., p. 249. Followed to its logical conclusion the doctrine of the majority makes the breach of a contract of this nature *damnum absque injuria,* for the city has no pe-

cuniary interest in such a contract; *Wald's Pollock on Contracts,* Williston's 3d Ed., p. 254; and, it has been held, cannot itself recover thereon, even for the loss of its own property. *Milford v. Bangor R. & E. Co.,* 106 Me., 316; *Town v. Ukiah W. & Imp. Co.,* 142 Cal., 173. On the other hand, the minority holding stands on the ground that the taxpayer, as beneficiary, is the real party in interest, and as such has a right of action for breach of the contract; *Woodbury v. Tampa W. Co.,* 57 Fla., 243; and it seems to do justice and to be consistent with sound legal principles. However, the decision in the principal case is correct in law, if it is right as to the fact that the contract was not made for the benefit of taxpayers; and it will undoubtedly remain the rule in the great majority of jurisdictions. For a comprehensive discussion of this subject see YALE LAW JOURNAL, vol. 19, p. 428.

WILLS—TRUST ESTATE—"INCOME"—CORPORATE STOCK DIVIDEND.—IN RE OSBORNE, 138 N. Y. SUPP., 18.—*Held,* that under a testamentary gift of the residuary estate, consisting of corporate stock, of testator in trust, to pay the income to a beneficiary for life, with gift over of the estate on her death, a stock dividend representing accumulated profits, earned in part during testator's lifetime and in part after his death, goes to the life tenant as "income" which is gain or profit, and which proceeds from labor, business, property, or capital.

Dividends, cash or stock, earned before the life tenancy began, are regarded as part of the *corpus,* and as such go to the remainderman. *Van Doren v. Olden,* 19 N. J. Eq., 176. If the dividends are accumulated after or during the tenancy they are looked on as income and go to the life tenant. *Appeal of Phila. Trust, Safe Deposit & Ins. Co.,* 16 Atl., 734. There are different rules when part of the dividends are earned before and part after such tenancy began. The early English rule gave ordinary dividends, declared during life tenancy to the tenant, but extraordinary or unusual dividends were held to belong to the remainderman. *Irving v. Houston,* 4 Paton., 521. (Found in Vol. II, Scots Reports, p. 164.) The Massachusetts rule, to which the later English rule corresponds, gives all cash dividends, however large, to the life tenant and all stock dividends, however made, to the remainderman. *Minot v. Paine,* 99 Mass., 108; *Lyman v. Pratt,* 183 Mass., 58; *Bouch v. Spoule,* L. R. 12 App. Cas., 385. This rule was followed by the United States Supreme Court in *Gibbons v. Mahon,* 136 U. S., 549, and by Connecticut in *Bishop v. Bishop,* 81 Conn., 509. The Pennsylvania rule, also known as the American rule, gives the entire dividend, stock or cash, to the life tenant, if earned during his tenancy, *Smiths' Estate,* 140 Penn., 344; but if the devidend is earned or accumulated before the tenancy began, it goes to the remainderman. *Oliver's Estate,* 136 Penn., 43. If it is earned partly before and partly after the beginning of the life tenancy, a just apportionment between the two is attempted. *Earp's Appeal,* 28 Pa. St., 368. In what is known as the New York and Kentucky rule, the Courts determine for themselves, according to the nature and substance of the thing which the corporation